

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 106 OF 2005.

Nagesh Ramdular Chauhan.	 Applicant.
Versus.	
Sudhakar Goli and another.	 Respondents.

Shri Anil Lalla of M/s.Lalla & Lalla for the Applicant.
Ms.M.M.Deshmukh, A.P.P. for the Respondent No.2-State.

CORAM : ABHAY S. OKA, J.

DATED : 15th June, 2005.

P.C.:

1. Heard the learned Counsel for the Applicant and the learned A.P.P. for the State. The Applicant is an accused in a case under section 138 of the Negotiable Instruments Act. The learned Magistrate convicted the Applicant. The Applicant was sentenced to suffer R.I. for one year and to pay fine of Rs.5000/- and in default of payment of fine to suffer further S.I. for three months. The Applicant was also directed to pay a compensation of Rs.6,25,000/ towards payment of the cheque amount. In appeal preferred by the Applicant the conviction and sentence has been upheld. The learned Additional Sessions Judge however clarified that the sum of Rs.25,000/- in cash paid by the Applicant to the

Respondent No.1 and deposit of Rs.2 lakhs in the trial Court shall stand adjusted towards compensation amount of Rs,6,25,000/- and therefore, compensation amount payable will be only Rs.4 lakhs.

2. The Applicant had issued four cheques of Rs.1 lakh each drawn on Punjab & Maharashtra Cooperative Bank Ltd. and four cheques in the sum of Rs.50,000/- each. After the cheques were dishonoured, demand notice was issued and thereafter complaint was filed. Initial case made out before the learned Magistrate by the Applicant was of total denial. A suggestion put to the complainant in cross examination on behalf of the Applicant was that the Applicant had taken loan of Rs.5,64,000/- only and not of Rs.6 lakhs. It was suggested that the amount was to be repaid by the Applicant in 35 monthly instalments of Rs.18,000/- and the payment of Rs.3,85,000/- was already made. The learned Magistrate has observed that on one hand the Applicant admitted to have accepted the loan from the Complainant and at the same time the Applicant was asking for document in writing to show payment of loan.

3. On 28th April 2005 in Criminal Application No.2250 of 2005 filed by the Applicant for bail, notice was

issued to the Respondent No.1. The office noting shows that thereafter the Advocate appeared for the Respondent No.1. On 4th May 2005 this Court recorded that the proposal is being forwarded to the Respondent No.1 for amicable settlement. Thereafter, the matter was kept for settlement by continuing interim relief which was granted earlier. Today the learned Counsel appearing for the Applicant on instructions of the Applicant states that the Applicant is not in a position to come out with any concrete proposal for settlement and therefore, the application should be heard on merits. Accordingly I have taken up the Application for hearing on merits. The learned Counsel for the Applicant submitted that the Courts below have not given anxious consideration to the fact that the payments made by Applicant were not disclosed in the complaint. He submitted that in the demand notice the Respondent No.1 claimed interest though it is allegedly a transaction of friendly loan. He submitted that what is admitted by the Applicant is only the signature on the cheques in question and in fact the Applicant had not issued cheques. He submitted that no case under section 138 of the Negotiable Instrument Act was made out.

4. None appears for the Respondent No.1. The learned

A.P.P. appears for the State.

5. The learned Magistrate held that the suggestion given to the Complainant during his cross-examination was that the Applicant had already received a sum of Rs.5.64,000/- from the Respondent No.1 and the payment of Rs.3,85,000/- was made. A suggestion was given that out of the amount of Rs.6 lakhs, a sum of Rs.5,64,000/- was to be repaid by instalment of Rs.18,000/- The learned Magistrate held that the signatures on the cheques were admitted and the cheques were dishonoured for the reason "stop payment". Considering the stand taken during the course of trial, the learned Magistrate held that the Complainant had advanced loan to the Respondent No.1. The learned Additional Sessions Judge accepted the fact that a sum of Rs.25,000/- was paid by the Applicant to the Respondent No.1 during the pendency of the Appeal and a sum of Rs.2 lakhs was deposited in the trial Court. The Courts below held that when consideration of loan was admitted by the Applicant, it was for the Respondent No.1 to lead evidence regarding its repayment.

6. The findings of fact recorded by the learned Magistrate have been confirmed in appeal.

7. The Apex Court has held in the case reported in (2002) 9 S.C.C. page 393 (Thakappan Nadar V/s.Gopal Krishnan) that reappreciation of evidence is not permissible in Revision Application. Interference can be made only when there is a procedural illegality or manifest error of law or where clinching evidence has been ignored.

8. This is not a case where any relevant evidence has been ignored. In fact the learned Additional Sessions Judge has noted the subsequent deposit by the Applicant and has given credit to the Applicant for the said deposit towards compensation amount.

9. The finding of the Courts below are based on legal evidence on record and there is no perversity. Hence the Revision Application is rejected.

Judge.